

# Citizen Complaints and Administrative Investigations

## 1020.1 PURPOSE AND SCOPE

This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the Oxnard Police Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

## 1020.2 CITIZEN COMPLAINT DEFINED

A citizen complaint includes any public complaint, anonymous or third party, regarding Department service, policy or procedure, claims for damages, or employee misconduct.

Employee misconduct includes, but is not limited to, the following:

- (a) Commission of a criminal offense.
- (b) Neglect of duty.
- (c) Violation of Department policies, rules, regulations, or procedures.
- (d) Conduct which may tend to reflect unfavorably upon the employee or the Department.

### 1020.2.1 AVAILABILITY OF COMPLAINT FORMS

Citizen complaint forms will be maintained in a clearly visible location in the public lobby. Forms may also be available at other city facilities, storefronts, and on the Department website.

### 1020.2.2 SOURCE OF COMPLAINTS

A supervisor receiving a complaint from any source against an employee which, if sustained, could result in disciplinary action, shall notify Professional Standards.

Any employee who becomes aware of possible misconduct by another employee, shall immediately report the incident to a supervisor or Professional Standards (Policy Manual § 340.3.2(f)).

### 1020.2.3 ACCEPTANCE OF COMPLAINTS

A complaint shall be accepted from any source including those that are written, verbal, electronic, in person, or by telephone. Although not required, every effort should be made to have the complainant appear in person. Anonymous and third party complaints should be accepted and investigated to the extent that the provided information allows.

A supervisor/manager receiving or initiating any complaint that may be investigated formally shall ensure that either a citizen complaint form has been completed, or that a memorandum or detailed email regarding the circumstances has been forwarded to Professional Standards. Supervisors

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shall report serious allegations to the Watch Commander or his/her manager, and Professional Standards.

When the nature of a citizen complaint relates to harassment or discrimination, the supervisor/manager receiving the complaint shall promptly contact Professional Standards, who will contact the Department of Human Resources and the Chief of Police for direction regarding the investigation (Policy Manual § 328).

Supervisors/managers shall document and forward a memorandum to Professional Standards for complaints against employees that allege:

- (a) Excessive force.
- (b) Discrimination or harassment.
- (c) Unlawful search and/or unlawful seizure of a person or property.
- (d) Dishonesty.
- (e) Domestic violence.
- (f) Improper/illicit use of alcohol, narcotics, or drugs.
- (g) Sexual misconduct.
- (h) Theft.
- (i) Retaliation/retribution against another employee.

Investigations of these incidents may be returned to the supervisor/manager to be handled informally if sufficient evidence is available to disprove the allegation.

Supervisors/managers may handle complaints informally when the following conditions apply:

- (a) The complaint, as stated, would not result in discipline to the employee.
- (b) The complaint, as stated, would not amount to the commission of a felony or misdemeanor.
- (c) The reporting person is satisfied that his/her complaint required nothing more than an explanation regarding the proper/improper implementation of Department policy or procedure.
- (d) The accused employee has no apparent pattern of similar behavior (should generally be limited to the past five years) for which he/she is accused.

Upon receipt of a citizen complaint, supervisors/managers should consider, and may be responsible for the following:

- (a) Conducting a preliminary investigation. This may include, but is not limited to the following: Reviewing digital recordings, reviewing the reason for the contact in CAD (i.e. call for service, traffic/pedestrian stop), reading related reports, checking ride schedules/AVL data, reviewing photographs, etc.

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- (b) Audio record interviews with the complainant and witnesses.
- (c) Making reasonable efforts to obtain names, addresses, and telephone numbers of additional witnesses.
- (d) When appropriate, and once medical attention has been provided, obtain photographs of alleged injuries, as well as accessible areas of non-injury.
- (e) Ensure that the procedural rights of the employee are followed.
- (f) When immediate action is necessary due to the seriousness and nature of the complaint, such that it may subject the employee or Department to severe criticism or liability, the concerned supervisor/manager shall ensure that the Duty Chief and Professional Standards are promptly notified.

When a complaint form is completed in person, the complainant should legibly write a detailed narrative of his/her complaint. If circumstances indicate that this is not feasible, the complaint may be given verbally to the receiving supervisor. In an effort to ensure accuracy in any complaint, a recorded statement shall be obtained from the reporting party. A refusal by a party to be recorded shall not alone be grounds to refuse to accept a complaint. Whether handwritten or dictated, the complainant's signature should be obtained at the conclusion of the statement. The complainant should be provided with a copy of his/her own original complaint per Penal Code § 832.7.

In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the employee's bureau chief or the Chief of Police who will initiate appropriate action.

When complaints are taken from juveniles, supervisors/managers should make every attempt to notify the parents or guardians of the circumstances prompting the complaint.

When a complainant is intoxicated to the point where his/her credibility appears to be unreliable, identifying information should be obtained and the person should be provided with a citizen complaint form.

#### **1020.3 ADMINISTRATIVE INVESTIGATIONS**

Administrative investigations include internally generated investigations into employee misconduct, improper job performance, and citizen complaints.

##### **1020.3.1 INVESTIGATIONS DEFINED**

**Formal (Disciplinary)** - A formal, or disciplinary investigation, is one where the allegation, if sustained, could result in discipline to the employee. Discipline shall be considered "punitive action" as defined in Government Code § 3303.

**Informal (Non-Disciplinary)** - An informal, or non-disciplinary investigation, is one where the complaining party is satisfied with the course of action taken, the allegation itself is of a minor nature not likely to result in discipline, or can quickly be resolved without the need for further

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investigation because sufficient evidence is available to disprove the allegation(s) (i.e. audio or video evidence).

#### 1020.3.2 FORMAL INVESTIGATION

Whether conducted by Professional Standards or an assigned supervisor, Government Code § 3303, et seq. shall be followed for employees who are members of the Oxnard Peace Officers Association (OPOA) or Oxnard Public Safety Managers Association (OPSMA).

Every investigator or supervisor assigned to conduct an investigation, shall complete the investigation in a timely manner. In the event that an investigation cannot be completed within one year of discovery, the assigned investigator or supervisor shall ensure that an extension or delay is warranted within the exceptions set forth in Government Code § 3304(d) or Government Code § 3508.1.

When an investigation discloses misconduct or improper job performance which was not alleged in the original complaint, the investigator shall take appropriate action to further investigate with regard to any additional allegations.

If the nature of the allegation(s) dictate that confidentiality is necessary to maintain the integrity of the investigation, the involved employee(s) need not be notified of the pending investigation unless and until the employee is interviewed within one year of discovery.

#### 1020.3.3 FORMAL INVESTIGATION REPORT FORMAT

Formal investigations shall be detailed and complete. The Investigation Report shall include the identity of the employee(s), the identity of the assigned investigator(s), the date of the incident, and follow the below format:

**Summary Of Allegations** - List the allegations separately (including applicable policy sections) with a brief summary of the scope of the investigation. Where appropriate, include the source of the complaint.

**Summary of Investigation** - A comprehensive summary of all relevant information developed through the course of the investigation, documented in chronological order. This section should be limited to facts, statements, description of any evidence, and observations of the investigator.

**Analysis/Conclusion** - The section of the report that ties the entire investigation together, reaching sound and well-supported findings on each alleged policy violation.

The completed investigation file should also include any materials used to support the investigation and findings. The materials may include but are not limited to transcripts of interviews, related police reports, photographs, audio and video recordings, and internal affairs documents.

#### 1020.3.4 INVESTIGATION DISPOSITIONS DEFINED

Each allegation in an investigation shall be classified with one of the following dispositions:

**Unfounded** - When the investigation discloses that the alleged act(s) did not occur or did not involve department personnel. Complaints which are determined to be frivolous will fall within the

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classification of unfounded (Penal Code § 832.5(c)). California Code of Civil Procedure § 128.5 (c) defines frivolous "as totally and completely without merit or for the sole purpose of harassing an opposing party."

**Exonerated** - When the investigation discloses that the alleged act occurred, but that the act was justified, lawful and/or proper.

**Not Sustained** - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the employee.

**Sustained** - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

**Incomplete** - A matter in which the complaining party refuses to cooperate or becomes unavailable, or where the subject of the investigation (such as an employee) becomes unavailable (such as due to separation of employment). At the discretion of Professional Standards, such matters may be suspended, or further investigated depending on the seriousness of the complaint, and the availability of sufficient information.

#### 1020.3.5 MANAGER RESPONSIBILITIES

Upon receipt of any completed formal investigation, the manager of the involved employee shall review the entire investigative file and any other relevant materials.

The manager shall complete an Investigation Summary, and make recommendations regarding the disposition of all allegations and the amount of discipline, if any, to be imposed.

- (a) Prior to forwarding recommendations to the employee's bureau chief, the manager may return the entire investigation to the assigned investigator or supervisor for further investigation or action.
- (b) When forwarding any written recommendation to the employee's bureau chief, the manager shall include all relevant materials supporting the recommendation.

#### 1020.3.6 RESPONSIBILITIES OF THE CHIEF OF POLICE AND BUREAU CHIEFS

The employee's bureau chief will review the manager's Investigation Summary, and may make additional recommendations regarding the disposition of all allegations and the amount of discipline, if any, to be imposed. Once the Investigation summary has been approved by the bureau chief, it shall be forwarded to the Chief.

Upon receipt of any written recommendation regarding a formal investigation, the Chief of Police shall review the recommendation and all accompanying materials. The Chief of Police may modify any recommendation and/or may return the file to the bureau chief for further investigation or action. Once the Chief of Police is satisfied that no further investigation or action is required, the Chief of Police shall determine the amount of discipline, if any, to be imposed.

In the event disciplinary action is recommended, the Chief of Police shall provide the employee with a written notice of intent to impose discipline. The following information should be contained:

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- (a) Specific allegations set forth in separate counts, describing the conduct underlying each count.
- (b) A recommendation of proposed discipline for the allegation(s).
- (c) A statement that the employee may be provided with, or given access to, all of the materials (except those deemed confidential) considered by the Chief of Police in recommending the proposed discipline.
- (d) An opportunity to respond orally or in writing to the Chief of Police within five (5) days of receiving the notice.
  - 1. Upon a showing of good cause by the employee, the Chief of Police may grant a reasonable extension of time for the employee to respond.
  - 2. If the employee elects to respond orally, the presentation may be recorded by the Department. Upon request, the employee shall be provided with a copy of the recording.

### **1020.4 EMPLOYEE RESPONSE (SKELLY HEARING)**

The following applies to OPOA and OPSMA members:

The Skelly Hearing is intended to provide the accused employee with an opportunity to present a written or oral response to the Chief of Police after having had an opportunity to review the supporting materials and prior to imposition of any recommended discipline.

The employee shall consider the following:

- (a) The Skelly Hearing is not intended to be adversarial.
- (b) Although the employee may be represented by an uninvolved representative or legal counsel, the Skelly Hearing is not designed to accommodate the presentation of testimony or witnesses.
- (c) The employee may suggest that further investigation be conducted, or may provide additional information (e.g., mitigating factors) for the Chief of Police to consider.
- (d) In the event that the Chief of Police elects to cause further investigation to be conducted, the employee shall be provided with the results of such subsequent investigation prior to the imposition of any discipline.
- (e) The employee may thereafter have the opportunity to further respond orally or in writing to the Chief of Police on the limited issue(s) of information raised in any subsequent materials.
- (f) Once the employee has completed his/her Skelly Hearing or, if the employee has elected to waive any such response, the Chief of Police shall consider all information received in regard to the recommended discipline. Once the Chief of Police determines that discipline will be imposed, a timely written decision shall be provided to the employee within 30 days, imposing, modifying, or rejecting the recommended

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discipline. In the event of a termination, the final notice of discipline shall also inform the employee of the reason(s) for termination.

- (g) Once the Chief of Police has issued a written decision, the discipline shall become effective

For employees outside of the OPOA or OPSMA, personnel rules and the operative Memorandum of Understanding (MOU) for the respective bargaining unit shall apply.

### **1020.5 POST SKELLY HEARING PROCEDURE**

In situations resulting in the imposition of a suspension, punitive transfer, demotion, or termination of a non-probationary employee, the employee shall have the right to an evidentiary appeal of the Chief of Police's imposition of discipline pursuant to the operative (MOU) and personnel rules.

During any post-Skelly administrative appeal, evidence that an officer has been placed on a Brady list or is otherwise subject to Brady restrictions may not be introduced unless the underlying allegations of misconduct have been independently established. Thereafter, such Brady evidence shall be limited to determining the appropriateness of penalty (Government Code § 3305.5).

### **1020.6 COMPLETION OF FORMAL INVESTIGATION**

Within 30 days of the final review by the Chief of Police, written notice of the findings shall be sent to the complaining party. This notice shall indicate the findings, however, will not disclose the amount of discipline, if any imposed. The complaining party should also be provided with a copy of his/her own original complaint (Penal Code § 832.7).

Any complaining party who is not satisfied with the findings of the Department concerning his/her complaint may contact Professional Standards to discuss the matter further.

### **1020.7 CONFIDENTIALITY OF PERSONNEL FILES**

All investigations of complaints shall be considered confidential, and shall be maintained within the Internal Affairs Unit (Policy Manual § 1026.3). The contents of such files shall not be revealed to other than the involved employee or authorized personnel except pursuant to lawful process.

In the event that an accused employee (or the representative of such employee) knowingly makes false representations regarding any formal investigation and such false representations are communicated to any media source, the Department may disclose sufficient information from the employee's Internal Affairs File to refute such false representations (Penal Code § 832.5).

Completed investigations shall be maintained for a period of no less than five years. (Penal Code § 832.5)

Letters of reprimand and final notices of discipline shall be maintained in the employee's Personnel File. Investigations which are unfounded, exonerated, or not sustained shall be maintained by the Internal Affairs Unit apart from the employee's Personnel File (Policy Manual § 1026.3).

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### **1020.8 ASSIGNMENT TO ADMINISTRATIVE LEAVE**

When an allegation of misconduct or improper job performance is of a serious nature, Professional Standards may assign the employee to administrative leave pending completion of the investigation.

It shall be the responsibility of Professional Standards to promptly notify the employee's bureau chief and the Chief of Police when an employee has been placed on administrative leave.

An employee placed on administrative leave may be subject to the following guidelines:

- (a) Continue to receive regular pay and benefits pending the imposition of any discipline
- (b) Relinquish any badge, department identification, assigned weapon(s), and any other department equipment to Professional Standards. The employee may be ordered not to exercise peace officer powers.
- (c) Continue to comply with all Department policies and lawful orders of a supervisor.
- (d) Temporary reassignment (generally Monday thru Friday from 0800 to 1700 hours) during the duration of the investigation, remaining available for contact during these times. The employee shall report as ordered by Professional Standards.
- (e) Be responsible for lawfully subpoenaed court appearances unless otherwise directed by Professional Standards.

At such time as any employee placed on administrative leave is returned to full and regular duty, the employee shall be returned to his/her regularly assigned shift with all badges, identification cards, and other equipment returned.

### **1020.9 ALLEGATIONS OF CRIMINAL CONDUCT**

When a department employee is suspected of potential criminal conduct in the City of Oxnard, the Chief of Police shall be notified as soon as practical. The Special Investigations Detail may be assigned to investigate the criminal allegations. The Chief may also request a criminal investigation by an outside law enforcement agency. Any separate administrative investigation may parallel the criminal investigation.

An employee accused of criminal conduct shall be provided with all rights and privileges afforded to a citizen, and the employee may not be administratively ordered to provide any information to a criminal investigator. No information or evidence administratively coerced from an employee may be provided to a criminal investigator.

Any law enforcement agency is authorized to release information concerning the arrest or detention of a peace officer, which has not led to a conviction, however, no disciplinary action, other than paid administrative leave shall be taken against the accused employee based solely on an arrest or crime report (Labor Code § 432.7(b)). An independent administrative investigation shall be conducted based upon the allegations in the report in accordance with department policy.



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#### **1020.10 ADMINISTRATIVE SEARCHES**

Assigned lockers and storage spaces may only be administratively searched in the employee's presence, with the employee's consent, with a valid search warrant, or where the employee has been given reasonable notice that the search will take place (Government Code § 3309).

All other departmentally assigned areas (e.g., desks, office space, assigned vehicles) may be searched by a supervisor for non-investigative purposes (e.g., obtaining a needed report or radio). An investigative search of such areas shall only be conducted upon a reasonable suspicion that misconduct is involved, and shall be conducted by Professional Standards personnel.

Employees shall have no expectation of privacy when using telephones, computers, radios or other communications provided by the Department.

Any employee may be compelled to disclose personal financial information pursuant to proper legal process if such information tends to indicate a conflict of interest with official duties, or, if the employee is assigned to or being considered for a special assignment with a potential for bribes (Government Code § 3308).

#### **1020.11 RESIGNATIONS/RETIREMENTS PRIOR TO DISCIPLINE**

In the event that an employee tenders a written retirement or resignation prior to the imposition of discipline, it shall be noted in the Internal Affairs File. The tender of a retirement or resignation by itself shall not serve as grounds for the termination of pending discipline.

#### **1020.12 DISCIPLINARY ACTION AGAINST PROBATIONARY EMPLOYEES**

In the event that a probationary employee is terminated solely for unsatisfactory performance or the failure to meet department standards, the employee shall have no right to appeal and the following shall be considered:

- (a) Termination of a probationary employee for such failure to pass probation shall be so reflected in the employee's Personnel File.
- (b) In the event that a probationary employee is disciplined or terminated for misconduct, the employee shall only be entitled to appeal the decision in the same manner as set forth in the Skelly procedure as set forth above. This appeal process may be held prior to or within a reasonable time after the imposition of discipline.
- (c) At all times during any investigation of allegations of misconduct involving a probationary OPOA member, such employee shall be afforded all procedural rights set forth in Government Code § 3303 and applicable Department policies.
- (d) A probationary employee's appeal of disciplinary action shall be limited to an opportunity for the employee to attempt to establish that the underlying allegations should not be sustained. Nothing in this policy or procedure, however, should be construed to establish any sort of property interest in or right to the employee's continuation of employment.

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- (e) The burden of proof for any probationary employee's appeal of disciplinary action shall rest with the employee and will require proof by a preponderance of the evidence.
- (f) In the event that a probationary employee meets his or her burden of proof in such a disciplinary appeal, the Department shall remove all reference to the underlying allegations of misconduct from the employee's Personnel File.
- (g) In the event that a probationary employee fails to meet his or her burden of proof in such a disciplinary appeal, the employee shall have no further right to appeal beyond the Chief of Police.